



**UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON**

TRISH M. BROWN
BANKRUPTCY JUDGE

1001 S.W. FIFTH AVENUE, # 700
PORTLAND, OREGON 97204
(503) 326 - 4961

NANCY C. ANTAL
LAW CLERK

SUZANNE M. MARX
JUDICIAL ASSISTANT

January 3, 2005

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Re: In re Daryl and Carla Richmond, Case No. 300-30685-tmb13

Ladies and Gentlemen:

This matter came before the court on December 16, 2004, on Daryl Gene Richmond and Carla Dawn Richmond's ("Debtors") objections filed on April 16, 2004, and April 30, 2004, to the application by Fred Kowolowski for supplemental compensation filed on April 5, 2004. Debtors and Mr. Kowolowski appeared pro se. The Chapter 13 Trustee was represented by Wayne Godare. The court heard the testimony of Carla Richmond and Dr. Amanda Modin for the Debtors and the testimony of Mr. Kowolowski. Thereafter, the court took this matter under advisement.

I have reviewed my notes, the exhibits, and the pleadings and other submissions in the file. I also have read applicable legal authorities, both as cited to me and as located through my own research. I have considered carefully the oral testimony and arguments presented and have read the parties' submissions in detail. The following findings of fact and legal conclusions constitute the court's findings under Federal Rule of Civil Procedure 52(a), applicable in this proceeding under Federal Rule of Bankruptcy Procedure 9014.

Mr. Kowolowski's application seeks payment of \$8,342.30, \$8,206.50 in fees and \$135.80 in costs. The Debtors' objections to the application had four basic complaints:

1. The Richmonds never received or saw page one of the Bankruptcy Fee Agreement (“the Agreement”);

2. The Agreement specified they would receive monthly statements. However, they never received any monthly statements and, therefore, they had no idea they were generating a large attorney’s fee bill;

3. Mr. Kowolowski’s disclosure of compensation dated September 15, 2003, estimated total fees of \$3,000.00. However, by that time Mr. Kowolowski’s fees already totaled \$1,957.50. Therefore, he should have known his fees were going to be much higher and he should have revised his estimated fees upwards; and

4. Mr. Kowolowski had trouble obtaining the billing statements and loan amortization from Wells Fargo Bank and its counsel Jason Wilson-Aguilar. Moreover, once received these statements were unintelligible and hard to read.

At the hearing, Mrs. Richmond testified regarding her experiences with Mr. Kowolowski. She felt he had not kept her informed nor had he done a competent job. I will enumerate the specific complaints and my rulings with respect to each below:

BANKRUPTCY FEE AGREEMENT

A. Incomplete Document

Mrs. Richmond testified that she only received the second page of the Agreement executed by herself and Mr. Kowolowski on May 6, 2003. However, she admitted that the original was a one page, two-sided document. She also admitted that it was signed in front of a notary in LaPine Oregon not in Mr. Kowolowski’s office.

The fact that she only had one side of the document in her records is not an indication that she never read or saw the whole document. Page 2 starts in the middle of a sentence and goes on to paragraph 5. Bold text immediately ahead of the signature line reads as follows:

“NOTE: THIS IS A BINDING CONTRACT. DO NOT SIGN IT UNTIL YOU HAVE READ IT AND ANY QUESTIONS YOU HAVE REGARDING IT HAVE BEEN ANSWERED.”

Mrs. Richmond’s testimony that the document only had one side when she signed it was not believable. Therefore, I will not reduce Mr. Kowolowski’s fees relating to the completeness of the Agreement.

B. Monthly Statements

Paragraph 9 of the Agreement specifies that the base (minimum) attorney's fee (excluding filing fee) for a Chapter 13 bankruptcy is \$2,500.00. Paragraph 10 describes the services for the base fee. Paragraph 11 describes the services not covered by the base fee:

"Services not covered by the base fee include, but are not limited to, rush service, petitions for self employed debtors, more than 25 creditors (including assignees), recording discharges, **discharging liens**, satisfying judgments in any court, adversary proceedings (litigating with creditors), **negotiating with creditors**, filing notices of automatic stay in pending cases, more than two conferences (including initial conference) needed to obtain information required for completion of petition, **disputing of creditor's claims where client has no documentation to support client's position, research on an issue unique to your situation**, filing amended or supplemental schedules required through no fault of the attorney (i.e. - client providing incorrect or insufficient data), seeking discharge of student loans, and having attorney fill out forms. Emergency filings (usually rush service) require an additional fee of not less than \$300.00. Cases involving delinquent, unfiled tax returns require an additional fee of not less than \$2,500.00 prior to filing." (Emphasis added)

Most, if not all, of Mr. Kowolowski's fees were services that weren't covered by the base fees. Mr. Kowolowski took this case over from Rex Daines and the Olsen, Olsen and Morgan firm. It is unfortunate that Mr. Kowolowski did not send out monthly statements so the Richmonds could see how much their attorney's fees were accumulating. However, the Richmonds knew how much time they were spending with Mr. Kowolowski, either on the telephone or in person, and they had copies of all the pleadings he filed on their behalf. Mr. and Mrs. Richmond knew how much Mr. Kowolowski charged on an hourly basis. I will not reduce Mr. Kowolowski's fees for anything relating to his disclosure of compensation nor the Agreement.

SHERMAN ACQUISITION LP/RESURGENT ACQUISITION LP LIEN AVOIDANCE

Mrs. Richmond testified that she was able to recently remove the lien of Sherman Acquisition LP/Resurgent Acquisition LP ("Sherman") from her property for the total of \$92 whereas Mr. Kowolowski had charged almost \$500 for that task. Mrs. Richmond would have the court believe that Mr. Kowolowski did not work on removal of the lien. My review of the time records indicate that Mr. Kowolowski charged a total of \$1,170 for this task, which does include some time spent on other claims objection, but for which I am unable to segregate.

Mr. Kowolowski prepared an objection to Sherman's secured claim # 10 (which claim amended claim #1) in the amount of \$6,386.91, served the objection on Sherman, participated in a hearing with the Honorable Randall Dunn in which Sherman did not appear, and prepared an order sustaining the objection to Sherman's claim. Mr. Kowolowski also spoke with a title

company to make sure the order would be accepted by them to clear Sherman's lien.

What Mrs. Richmond did was obtain a certified copy of the order sustaining the objection for \$36 and recorded that in the records of Deschutes County for \$56. Mrs. Richmond testified many times that she could do many tasks herself. That she was required to get the certified copy of the order and record it was not unreasonable.¹ However, I do consider the time spent on this task to be on the high side. Mr. Kowolowski objected to the Sherman claim on a court form and I did not receive any explanation from Mr. Kowolowski as to why he needed to research lien avoidance. Therefore, I will reduce Mr. Kowolowski's fees for this task by \$400.00.

UNNECESSARY CHARGES

Mrs. Richmond testified that Mr. Kowolowski did unnecessary work in February 2004, relating to the Chapter 13 Trustee's motion to dismiss filed on February 5, 2004, and the Trustee's request for 2001-02 tax returns. She stated that by the time she received Mr. Kowolowski's letters in regard to these items she had already taken care of them with the Trustee's office staff. However, she did not testify that she notified Mr. Kowolowski of her conversations with the Trustee's office nor that she sent Mr. Kowolowski copies of the tax returns requested by the Trustee. I will not reduce Mr. Kowolowski's fees for these tasks.

Mrs. Richmond also testified that all work done after Mr. Kowolowski was terminated was unnecessary. Most of this time was spent researching whether he would be entitled to fees and to preparing a fee statement. The total billing for the time in March 2004 was \$339. The customary fees for preparation of a supplemental fee application is \$35 and I will reduce Mr. Kowolowski's fee by \$304.00.

MISCELLANEOUS COMPLAINTS

A. Office Set-up

Mrs. Richmond was displeased with the way she was able to participate in telephone hearings in Mr. Kowolowski's office, i.e., in another room which was not private and which had no speaker phone so she and her husband could not listen together and where other office workers continued to type and complete their work making listening hard. At one hearing Dr. Modin was taking "post-it" notes between the rooms. However, while this situation is less than ideal, Mrs. Richmond did not say how this effected the quality of service she was getting from

¹ This is especially true in light of the fact that the Debtors terminated Mr. Kowolowski's services by letter dated February 23, 2004, although an order allowing his withdrawal as their counsel was not entered until April 6, 2004.

Mr. Kowolowski nor how this increased her attorney fees. Therefore, I will not reduce Mr. Kowolowski's fees with regarding to this complaint.

B. Wells Fargo Claim

Mrs. Richmond also complained that she was not made aware of Wells Fargo Bank's amended claim in a timely manner and that she only learned about it because Dr. Modin saw the amended claim in Mr. Kowolowski's file. Mrs. Richmond did not testify as to the manner in which the Debtors were harmed by the timing of receiving Wells Fargo's claim. Mr. Kowolowski did file an objection to Wells Fargo Bank's claim, had several months of negotiations with its counsel, and met with an accountant before he was terminated by the Richmonds. I will not reduce Mr. Kowolowski's fees relating to Wells Fargo Bank's claim.

C. Malpractice

There was confusing testimony as to whether Mr. Kowolowski would advise the Richmonds on a potential malpractice claim against their former bankruptcy attorney, Rex Daines and Olsen, Olsen and Morgan. Mr. Kowolowski's testimony was that he advised the Richmonds that he didn't do malpractice work and that if they wanted to pursue that matter he would refer them to another attorney. Again, because the Richmonds could not point to either an increase in fees or harm to them, I will not reduce Mr. Kowolowski's fees. No charges appear on the billing statements relating to any possible malpractice claim.

D. Selco Credit Union Claim

Mr. Kowolowski also objected to the Claim #8 filed by Selco Credit Union ("Selco") in the amount of \$16,547.77. The amended plan dated February 8, 2001, valued Selco's secured claim at \$11,500 plus interest at nine percent (9%). The amended plan was confirmed on April 26, 2001. Apparently, Selco had good payment records and a stipulated order fixing Selco's claim as of August 29, 2003, at \$3,994.01 was entered on December 15, 2003. The records provided by the Chapter 13 Trustee confirm the amount paid to Selco was \$11,477.83 plus interest of \$2,493.50. Mr. Kowolowski's fees relating to the Selco claim, not including those included in general claims objections discussed above, totaled \$462.00. I will allow all these fees as the claims objection filed by Mr. Kowolowski had the effect of reducing Selco's claim by approximately \$5,000.00.

ADDITIONAL COURT REDUCTIONS

In my independent review of the supplemental application I discovered several time entries which I believe should be reduced or eliminated:

<u>Date</u>	<u>Timekeeper</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>	<u>Remarks</u>
6/3/03	FK	File Status Review	0.10	15.00	Task seems unnecessary. Reduce fees by \$15.00.
6/16/03	FK	File Status Review	0.10	15.00	Tasks seems unnecessary. Reduce fees by \$15.00.
6/17/03	LF	Preparation of plan payment amortization - 400 payment, 6 months, 800 TA / Telephone call to Jason Wilson - Aguilar	1.00	60.00	Highlighted tasks not itemized. Time to prepare amortization seems excessive in that the same description is also on 6/16/03 and 7/1/03. I will allow \$60.00 for all time. Reduce fees by \$60.00.
6/17/03	FK	File Status Review	0.10	15.00	Task seems unnecessary. Reduce fees by \$15.00.
10/20/03	FK	File Status Review	0.10	15.00	Task seems unnecessary. Reduce fees by \$15.00.
10/31/03	FK	Telephone call to Chapter 13 Trustee - Machine message, please call	0.10	15.00	Tasks appear unnecessary. Reduce fees by \$30.00.
	FK	File Status Review	0.10	15.00	
12/3/03	FK	File Status Review	0.10	15.00	Task seems unnecessary. Reduce fees by \$15.00.
1/5/04	FK	File Status Review	0.10	15.00	Task seems unnecessary. Reduce fees by \$15.00.
1/14/04	FK	File Status Review	0.10	15.00	Task seems unnecessary. Reduce fees by \$15.00.

<u>Date</u>	<u>Timekeeper</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>	<u>Remarks</u>
1/15/04	FK	File Status Review	0.10	15.00	Task seems unnecessary. Reduce fees by \$15.00.
1/16/04	FK	File Status Review	0.10	15.00	Task seems unnecessary. Reduce fees by \$15.00.
1/28/04	FK	File Status Review	0.10	15.00	Task seems unnecessary. Reduce fees by \$15.00.
2/17/04	FK	File Status Review	0.10	15.00	Task seems unnecessary. Reduce fees by \$15.00.
2/18/04	FK	File Status Review	0.10	15.00	Task seems unnecessary. Reduce fees by \$15.00.
					\$270.00 Total

My total reduction of Mr. Kowolowski's fees is \$947.00, \$400 with regard to the Sherman lien avoidance, \$304 with regard to preparation of the supplemental fee application, and \$270 for miscellaneous charges. Therefore, I will allow Mr. Kowolowski's fees in the amount of \$7,232.50, costs in the amount of \$135.80, for a total of \$7,368.30. Mr. Kowolowski should submit an order within 15 days of this letter.

Very truly yours,

/s/ Trish M. Brown

Trish M. Brown

TMB/smm